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ORDER E-FILED ON 1/5/07

6 Attorneys for Defendant
7 AMERICAN HOME ASSURANCE COMPANY

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 MONTEREY MUSHROOMS, INC., a
12 California corporation,

13 Plaintiff,

14 v.

15 AMERICAN HOME ASSURANCE
16 COMPANY and DOES 1 through 20,

17 Defendants.

) CASE NO. C 06-00400 HRL

) **JOINT STIPULATION TO CONTINUE
CERTAIN DISCOVERY DEADLINES;
PROPOSED ORDER**

) Hon. Howard R. Lloyd

) Dept. 2

) ACTION FILED: 1/20/06

18 Plaintiff MONTEREY MUSHROOMS, INC. and Defendant AMERICAN HOME
19 ASSURANCE COMPANY, by and through their undersigned counsel, hereby jointly stipulate to
20 continue the certain discovery deadlines by sixty (60) days.

21 Pursuant to entry of this Court's Order dated September 21, 2006, the Court scheduled the
22 following discovery deadlines and trial and trial date:

- | | |
|---|-------------------|
| 23 • Fact Discovery Cutoff | January 19, 2007 |
| 24 • Designation of Experts with Reports | February 2, 2007 |
| 25 • Designation of Rebuttal Experts with Reports | February 16, 2007 |
| 26 • Expert Discovery Cutoff | March 16, 2007 |
| 27 • Last Day for Hearing on Dispositive Motions | April 24, 2006 |
| 28 • Final Pretrial Conference | June 5, 2007 |

Jury Trial

June 11, 2007

(See Court's Order dated September 21, 2006, attached hereto as Exhibit "A.")

Pursuant to the Court's Order, the parties were further ordered to complete mediation by August 28, 2006.^{1/} The parties thereafter scheduled a mediation for August 29, 2006, and agreed to an informal discovery stay pending completion of the mediation. On August 29, 2006, the parties participated in the mediation before the Hon. Harry Low, but the matter was not resolved.

However, in a good faith effort to resolve this lawsuit, the parties agreed to further evaluate several issues discussed at the mediation and participate in a second mediation session before Judge Low on October 3, 2006. Unfortunately, the evaluation that needed to be completed before the next mediation session could occur was delayed due to counsel for MMI being in trial.

Therefore, the parties agreed to continue the mediation for one month, and it took place on November 6, 2006.

During that second mediation session, settlement discussions stalled because there is a wide gulf between the parties' respective accounting analyses of MMI's business interruption claim. In order to resolve this impasse, the parties agreed to allow their accountants to meet directly to discuss their respective theories and see if common ground could be reached. The parties are hopeful that this meeting will result in, if not an agreement as to value, at least a significant narrowing of the gap that currently exists. Because of year-end related obligations of MMI's chief financial officer, this meeting will not be able to go forward until early January.

If the accountants are unable to significantly resolve their differences, the parties have discussed the possibility of submitting the business interruption valuation issue to appraisal. Should this occur, both sides will designate their respective appraisers and the appraisers will thereafter select a neutral umpire. The parties will likely stipulate to allow the appraisers to complete their analyses on the existing accounting data and reports, so a formal hearing will likely not be required. If the appraisers are unable to reach an agreement, the parties may have to resolve that issue with a formal hearing, which will take several weeks to schedule.

^{1/} Pursuant to a Stipulation entered by this Court, the mediation deadline was extended to August 29, 2006.

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1 Therefore, given the efforts of the parties to explore the informal resolution of this dispute
2 and the current status of those efforts, good cause exists for this Court to continue certain
3 discovery deadlines by sixty days. Even though the parties are optimistic that this matter will
4 settle during the above-described process or at a further mediation session, in the event this matter
5 is not resolved the parties will be substantially prejudiced if the current discovery deadlines are
6 enforced.

7 Therefore, in stipulating and agreeing to request this continuance, the parties agree and
8 stipulate to the following, subject to the Court's approval:

9 1. The parties agree that certain of the discovery deadlines associated with the
10 June 11, 2007 trial date should be vacated.

11
12 Respectfully submitted,

13 DATED: December 26, 2006

WILLOUGHBY, STUART & BENING, INC.

14
15 By 

BRADLEY A. BENING
Attorneys for Plaintiff
MONTEREY MUSHROOMS, INC.

16
17
18 DATED: December 21, 2006

LEWIS BRISBOIS BISGAARD & SMITH LLP

19
20 By 

JULIAN J. PARDINI
Attorneys for Defendant
AMERICAN HOME ASSURANCE COMPANY

21
22
23
24 **ORDER**

25 Upon reviewing the above stipulated request of the parties for an order continuing certain
26 discovery deadlines,

27 **IT IS HEREBY ORDERED** that:

IS VACATED.

28 1. The trial date of this matter ~~remains as scheduled on June 11, 2007~~ **IS VACATED.**

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2. The Final Pretrial Conference ~~remains as scheduled on June 5, 2007~~ **IS VACATED.**
3. The Last Day for Hearing Dispositive Motions ~~remains as scheduled April 24, 2007~~ **IS VACATED.**
4. Certain discovery deadlines as set forth in this Court's Order dated September 21, 2006 are vacated.
5. The Fact Discovery Cutoff is now extended to March 19, 2007.
6. Designation of Experts with Reports will be due on or before April 2, 2007.
7. Designation of Rebuttal Experts with Reports will be due on or before April 16, 2007.
8. Expert Discovery Cutoff is now extended to May 16, 2007.
9. The parties shall appear for a further case management conference on May 29, 2007, 1:30 p.m. in Courtroom 2. A joint status report shall be filed no **DATED** later than May 22, 2007.

IT IS SO ORDERED.

Dated: January 5, 2007


HONORABLE HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE